**Teamsters Local Union No. 579, affiliated with the International Brotherhood of Teamsters, AFL–CIO (Janesville Auto Transport Company, Inc.) *and* James A. Watson.** Case 33–CB–2889

March 31, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On December 31, 1991, Administrative Law Judge Joel A. Harmatz issued the attached decision. The Respondent has filed exceptions and a supporting brief, and the General Counsel has filed a brief in support of the judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the judge's decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions, and to adopt the judge's recommended Order.

In adopting the judge's findings, we recognize that the Seventh Circuit has held that Section 8(b)(1)(A) does not regulate ''the penalties a Union may impose so long as the penalty does not impair the member's status as an employee.'' *NLRB v. Operating Engineers Local 139*, 796 F.2d 985, 990 (7th Cir. 1986). In support of this conclusion, the Seventh Circuit relied heavily on certain language in *NLRB v. Boeing Co*., 412 U.S. 67, 74 (1973) (citing *Scofield v. NLRB*, 394 U.S. 423, 428–430 (1969)), and Board case law predating this Supreme Court precedent. In *Boeing*, the Court addressed whether the Board is required by Section 8(b)(1)(A) to inquire into the reasonableness of a disciplinary fine imposed by a union on a member. The Court concluded ''that when the union discipline does not interfere with the employee-employer relationship *or otherwise violate a policy of the National Labor Relations Act*, the Congress did not authorize [the Board] 'to evaluate the fairness of union discipline meted out to protect a legitimate union interest.''' 412 U.S. at 78 (emphasis supplied, footnotes omitted). In support of the italicized language quoted above, the Court cited *Scofield v. NLRB*, 394 U.S. at 429, and *NLRB v. Shipbuilders*, 391 U.S. 418 (1968).

In *NLRB v. Shipbuilders*, supra, the Supreme Court held that a union's expulsion of members, who filed unfair labor practice charges against it prior to exhausting intraunion remedies, violated Section 8(b)(1)(A) even in the absence of proof that the expulsion affected the members' status as employees. Thereafter, in *Scofield*, the Supreme Court upheld a union rule setting a ceiling on the daily wages that members working on an incentive basis could earn. The Court observed that the union's production ceiling rule advanced a legitimate union interest unrelated to the ''mere fiat of a union leader'' and no impairment of a ''statutory labor policy'' was shown. 394 U.S. at 430–432. The Court cautioned, however, that if a union rule ''invades or frustrates an overriding policy of the labor laws the rule may not be enforced, even by fine or expulsion, without violating § 8(b)(1).'' 394 U.S. at 429. The Court then described a union's authority to impose internal rules as follows: ''8(b)(1)[(A)] leaves a union free to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule.'' 394 U.S. at 430.

The Board has interpreted these decisions of the Supreme Court to mean that internal union discipline, imposed in retaliation for a member's exercise of the right to engage in intraunion activities in opposition to the incumbent leadership of the union, violates Section 8(b)(1)(A) because it does not reflect a legitimate union interest and, instead, impairs a policy which Congress has imbedded in the labor laws, e.g., the right guaranteed by the Labor-Management Reporting and Disclosure Act of 1959 to participate fully and freely in internal union affairs. *Carpenters Local 22 (Graziano Construction)*, 195 NLRB 1, 2 (1972). See also *Machinists Local 707 (United Technologies)*, 276 NLRB 985 (1985), enfd. 817 F.2d 235 (2d Cir. 1987). We note that the Union's actions here also impair policies imbedded in the National Labor Relations Act, specifically the right guaranteed by Section 7 of the Act to concertedly oppose the decisions made by the incumbent leadership of the Union. *Steelworkers Local 1397 (U.S. Steel Corp.)*, 240 NLRB 848, 849 (1979). See also *United Technologies*, above.

The Supreme Court's decision in *Pattern Makers' League v. NLRB*, 473 U.S. 95 (1985), also cited by the Seventh Circuit in *Operating Engineers Local 139*, supra, is consistent with our interpretation of Section 8(b)(1)(A). There the Court majority upheld our finding that Section 8(b)(1)(A) prohibits a union from fining members who have tendered resignations that are invalid under the union constitution. The Court reaffirmed that ''Section 8(b)(1)(A) allows unions to enforce only those rules that 'impai[r] no policy Congress has imbedded in the labor laws. . . .' *Scofield*, supra, at 430.'' 473 U.S. at 104. The Court specifically rejected, as inconsistent with its holding in *Marine*

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

*Workers*, the position that only union rules affecting a member's employment status violate Section 8(b)(1)(A). 473 U.S. at 109 fn. 20. Accordingly, we respectfully adhere in this case to the interpretation of Section 8(b)(1)(A) established in the Supreme Court decisions cited above and in the Board's prior precedent, and we affirm the judge's finding of a violation.

## ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Teamsters Local Union No. 579, affiliated with the International Brotherhood of Teamsters, AFL–CIO, Janesville, Wisconsin, its officers, agents, and representatives, shall take the action set forth in the Order.

*Deborah A. Fisher, Esq.*, for the General Counsel.
*Naomi E. Eiseman, Esq.* and *Frederick Perillo, Esq. (Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman S.C.)*, of Milwaukee, Wisconsin, for the Respondent.
*James A. Watson*, of Janesville, Wisconsin, pro se, for the Charging Party.

## DECISION

### STATEMENT OF THE CASE

JOEL A. HARMATZ, Administrative Law Judge. This case was tried in Rockford, Illinois, on September 30, 1991, on an original unfair labor practice charge filed on January 30, 1991, and a complaint issued on March 5, 1991, alleging that Teamsters Local Union No. 579, affiliated with the International Brotherhood of Teamsters, AFL–CIO[1] (the Respondent) violated Section 8(b)(1)(A) of the Act on October 20, 1990, by informing Charging Party James A. Watson that he would be excluded from extra benefit plans negotiated by the Respondent; by announcing that certain members in good standing would be removed from a mailing list maintained by the Respondent for the benefit of its members; and, further, by actually excluding this group from the Respondent's ''extra internal union benefit plans,'' including a $2000-death and dismemberment policy. Finally, it is alleged that the Respondent violated Section 8(b)(1)(A) of the Act, by, on or about November 10, 1990, announcing that these same individuals would be excluded from the aforesaid death and dismemberment policy. In its duly filed answer, the Respondent denied that any unfair labor practices were committed. Following close of the hearing, briefs were filed on behalf of the General Counsel and the Respondent.

On the entire record,[2] including my opportunity directly to observe the witnesses and their demeanor, and after considering the posthearing briefs, I make the following

### FINDINGS OF FACT

#### I. JURISDICTION

The Employer, Janesville Auto Transport Company, Inc., a Delaware corporation, from its facilities in Janesville, Wisconsin, is engaged in the interstate transportation of new vehicles by motor truck. In the course of that operation, it annually provides services valued in excess of $50,000 in States other than the State of Wisconsin. The complaint alleges, the answer admits, and I find that the Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

#### II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the answer admits, and I find that the Respondent, Teamsters Local Union No. 579, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (the Union), is a labor organization within the meaning of Section 2(5) of the Act.

#### III. THE ALLEGED UNFAIR LABOR PRACTICES

##### A. The Issues, Background, and the Watson Letter

The complaint in this case stems from conduct on the part of Brendan Kaiser, the Respondent's secretary-treasurer. The General Counsel argues that Kaiser, on his own and with use of his standing and influence within the Respondent, retaliated against union members who publicly expressed opposition to his endorsement of a health provider and who opposed his candidacy for delegate to the International Convention. By way of defense, the Respondent asserts, essentially, that Kaiser's reaction was legitimate as a means of protecting membership interests generally, and that, in any event, since employment interests were unaffected by the Respondent's action, legally, the conduct complained of was not within the purview of Board remedies.

The Respondent represents about 1500 workers, including drivers and yard men employed by Janesville Auto Transport Company. Those identified as targeted by Kaiser for unlawful reprisal; namely, James A. Watson, John Wilson, Willard Ness, George Brown, Davis Schuler, Anton Tomten, Mike McGuire, and Richard Stearnes, were among 50 yard workers employed by that firm.

Two events figure prominently in the wrongful conduct attributed to the Respondent. The first involved Kaiser's endorsement of a health provider, the second, his candidacy for election as delegate to the International Convention scheduled for December 1991. Specifically, the facts show that in August 1990, Kaiser had updated an arrangement in which Wisconsin Vision & Hearing would provide a series of discounts to the Respondent's active members and retirees, who presented themselves for that firm's services. As part of that process, Kaiser authorized Wisconsin Vision & Hearing to use Respondent's letterhead and his name to support an endorsement distributed by Wisconsin Vision.[3] That document, in material part, stated:

[1] The Respondent's name appears as amended at the hearing.

[2] Following close of the hearing, the General Counsel moved that the executive board minutes of November 10, 1990, and March 16, 1991, previously marked as G.C. Exhs. 20(b) and (c), respectively, be stricken from the record as not offered and inadvertently included. The motion is granted. Certain errors in the transcript are noted and corrected.

[3] G.C. Exh. 10. More than a thousand copies were sent. The distribution reached to all members, active and inactive, including retirees.

> Wisconsin Vision & Hearing is *THE ONLY* vision care provider *endorsed* by your Executive Board. We urge you to use their facility . . . for all your future eyecare needs including eye examinations, eyeglasses and contact lenses. They have an outstanding record of providing quality products at an outstanding price to our members and dependents. In addition Wisconsin Vision & Hearing is a *union shop* under contract with UCFW Local #1444.
>
> Also, we remind you they moved into a beautiful new facility here in Janesville to better serve our eyecare needs. Their huge frame selection along with the best prices, delivered to us by union members, should be more than enough reason for all of us to patronize their facility.
>
> Please give Wisconsin Vision & Hearing serious consideration for all your eyecare needs in the future.
>
> Fraternally yours,
> Brendan Kaiser
> Secretary-Treasurer

Not all union members were impressed. Some regarded the offer as intrusive. The Charging Party, James Watson, composed a letter dated August 21 to Wisconsin Vision, stating in material part as follows:

> Recently members of Teamsters Local 579 received the enclosed letter from Brendan Kaiser urging members and retiree's [sic] to . . . patronize your business.
> . . . .
>
> We [the] undersigned members in good standing of Local 579 are NOT SO BLIND as to choose our Vision & Hearing provider simply because they are a union shop. Further, we do not consider where we obtain our Vision care to be anyone's business except our own. I33 As a result of your being recommended by Brendan Kaiser, we would like you to know that none of the undersigned or any member of our family's will ever set foot in your door or do a nickel's worth of business with you!

Watson's views were endorsed by other members of Local 579. Thus, John Wilson, Mike McGuire, Willard Ness, George Brown, David Schuler, Anton Tomten, and Richard Stearnes, all joined as signatories to his letter.

### B. *Kaiser's Reaction*

Ultimately, this letter would provide the linchpin for an effort by Kaiser to demean his opponents and thereby to enhance his own political posture. Although his right to campaign on this basis is not challenged, Kaiser went further, enmeshing the Union and its power to punish. This broadening of his vendetta against the eight signers is the sole focus for the General Counsel's claim of proscribed activity.

In this respect, as shall be detailed below, Kaiser's reaction to the August 21 letter occurred on three fronts. First, he would by personal letter sharply attack Watson and the latter's ''unionism.'' Second, he would publish the Watson letter and his response in his effort to demean the politics of the seven members who agreed with Watson, including a long standing and present rival, John Wilson. And, finally, at executive board and general membership meetings held by the Respondent during the election campaign, he would declare that this latter group should and would be denied certain services from the Union, urging these bodies to adopt such restraints.

Kaiser's response to Watson's letter was not immediate. While claiming to be appalled, he apparently remained silent for a period of 2 months,[4] before reacting explosively on October 20. Thus, by letter of that date, he personally assailed Watson. To understand Kaiser's attack, it is noted that a group politically opposed to Kaiser existed within Local 569, calling themselves ''member first.'' Kaiser, who denied that he understood that Watson supported ''member first,'' showed little hesitation in aligning Watson with that group, as follows:

> Your anti-unionism is again exhibited as it always has been, and as you told me about your disbelief of the Union theory.
>
> . . . .
>
> When the Local Union negotiates the opportunity to have services provided for the membership that will reduce out-of-pocket expense, or full payment of certain services and items . . . or major discounts for those not as fortunate to have vision coverage, and a MINUTE FEW WRITE and sign a stupidity advertisement letter to the provider, is nothing more than ABSOLUTE STUPIDITY. *IGNORANCE* is correctable through education, *STUPIDITY* is FOREVER.
>
> For a person who claims to be a ''*MEMBER'S FIRST*'' [sic] advocate, and signs something as stupid as the August 21, 1990 letter to Wisconsin Vision and Hearing, certainly displays his hypocracy [sic].[5]
>
> The Local Union will remove your name from any of the EXTRA benefits negotiated by the author of this reply.[6]

Next, Kaiser used the Watson letter as a means of rallying support against his political opponents. He first sought to enlist support from among union stewards and committeepersons. A memo was sent to about 60 serving in either of these posts on or about October 20. A copy of Watson's August 21 letter was enclosed. [G.C. Exh. 13.] In appealing for support, Kaiser commented on Watson's letter, as follows:

> HAVE YOU EVER SEEN ANYTHING SO STUPID AND ANTI-UNION?

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[4] Kaiser testified that he learned of that document when telephoned in August by an unidentified ''young man,'' who stated that he was calling on behalf of Wisconsin Hearing and Vision. According to Kaiser, the caller seemed to be insulted by the Watson letter and inquired if the Union wished to cancel the discount arrangement. As shall be seen, I did not believe Kaiser's testimony in this respect.

[5] The effort on the part of Kaiser to impress that he did not regard Watson as a members first supporter, apparently led him to swear that John Wilson, not Watson, was the object of this passage. This was taken as consistent with Kaiser's propensity to amend events through his sworn testimony. Nowhere does the letter mention Wilson or address anyone other than Watson. There is no indication that he forwarded a copy of this document directly to Wilson. Kaiser was not believed.

[6] G.C. Exh. 12. This document substantiates prima facie the allegation in the complaint that Kaiser informed Watson that he would no longer participate in union benefit plans.

> I ask you to write a letter in support of the Local Union Secretary-Treasurer to negotiate membership benefits and discounts on services over and above the contract health, welfare benefits, and return them to the Local Union.
>
> If you care, I care,
>
> Brendan F. Kaiser [s]

On October 24, Kaiser admits to distributing a copy of Watson's letter, together with his October 20 response to Watson to all union members (about 50) employed by Janesville Auto Transport Company, Inc. This latter document was observed by Watson on the Company's bulletin board.[7]

While it might be said that Watson had not opposed Kaiser politically in the past, the same could not be said of all who signed the August 21 letter. In the fall of 1990, a campaign was in progress to elect a delegate and alternate to the International convention scheduled for the summer of 1991. Kaiser ran for delegate, and Respondent's president, Marvin Lewis, ran for the position of alternate delegate. They were opposed, respectively, by John Wilson and Mike McQuire, both of whom penned their endorsement to the August 21 Watson letter.[8]

The rivalry between Wilson and Kaiser transcended the delegate campaign. Recently, and perhaps historically, Wilson supported the ''Teamsters for a Democratic Union'' (TDU), a rebel group within the Teamsters that functioned at a national level, ostensibly seeking broadened democratic reforms within that organization.[9] Kaiser's attitude toward Wilson and ''member first'' was linked with his opinion about TDU and their candidate for International president. In that connection, ''member first'' and TDU supported Ron Carey, for International president. Kaiser and Lewis opposed Carey, and during the campaign linked members first, and its candidates, Wilson and McQuire, with TDU. Kaiser portrayed TDU in his campaign literature as supported by companies seeking to destroy the Union. The Watson letter was the centerpiece for Kaiser's own campaign propaganda, which assailed the union principles of Wilson and McGuire, his opponents in the delegate election, and, their candidate for International president, Ron Carey.[10]

Kaiser's propensity to equate opposition with a conspiratorial movement against him is not surprising. His antipathy toward those who would support John Wilson became evident only a few weeks after Wilson, on July 6, 1990, announced his candidacy for the post also sought by Kaiser.[11] Earlier, Wilson had filed a complaint against Kaiser with International President William J. McCarthy, complaining that Kaiser had appointed a steward, without benefit of an election.[12] By letter to McCarthy, dated July 23, 1990, Kaiser launched a scathing attack on Wilson and his tactics, describing him as a ''disruptive and destructive dues payer.'' Kaiser in that document warned the International president:

Kaiser's use of the Watson letter did not end with its use as fodder for the delegate campaign. As events unfolded, his published criticism of and anger toward Wilson and McGuire for their support of Watson's letter, would extend to all who signed. Thus, he admits to presenting that document to the Respondent's executive board on Saturday, October 20, together with his response to Watson. This proffer was accompanied by his motion that the executive board agree to remove the names of all signers from ''the mailing list.'' The executive board concurred, signifying their approval by appending their signatures to a copy of Kaiser's response to Watson.[13] The minutes of the executive board meeting of October 20, included the following:

> Brendan has just negotiated a $2000, two-year enrollment with Wisconsin Home Life Insurance Company. . . . Brendan's proposal would have all members with withdrawal cards and still on our seniority list be provided this benefit and it also would apply to retirees. The company agreed to Brendan's proposal which affects 1,850 individuals. Brendan requested the executive Board take action and moved that we not provide those who signed Mr. Watson's letter of October 20, 1990 [sic] with any benefit information other than what their contract or labor agreement provides. [G.C. Exh. 20.]

That same afternoon, a general membership meeting was held. It was attended by 30 to 40 out of a total active membership of 1225. Kaiser followed up on his position before the executive board earlier that day by reading Watson's October 20 letter to Wisconsin Vision, specifically identifying those who signed that document, moving, effectively, that those attending follow the executive board and approve re-

[7] Watson's letter was editorialized by Kaiser with a slap at political opponents, as particularized below. G.C. Exh. 15.

[8] McQuire replaced Clifford Chetnick, the original candidate for the alternate position. When Kaiser, at a general membership meeting on October 20, presented his motion to impose sanctions against the signers of Watson's letter, he received a second from Chetnick. There is no evidence why Chetnick might have taken this step when earlier he was allied with Wilson. This apparent turnabout is in no sense viewed as having any material bearing on the issues in dispute in this case.

[9] Kaiser denied knowledge that Wilson supported the TDU. Wilson's involvement with the TDU provoked him to arrange and preside over a meeting under banner of that organization which was addressed by Susan Jenick, a representative of the ''Association for Union Democracy.'' On that occasion, Wilson explained that his group was supporting the candidacy of Ron Carey for International president, playing a tape of one of the latter's speeches. Kaiser had been alerted in the past to the fact that Wilson had sponsored a meeting of TDU. G.C. Exh. 3. Kaiser also would later admit that prior to July 1990, he was aware that Wilson had used his vacation to solicit signatures in furtherance of Carey's run for International president.

[10] G.C. Exhs. 4, 15, and 16.

[11] G.C. Exh. 6. This rivalry may date back to 1978, when Kaiser was removed as ''steward'' by the Union's secretary-treasurer, Leonard Schoonover. The latter appointed Wilson as Kaiser's replacement. After Wilson was elected to that post in September 1988, only 3 months later Kaiser removed him from that post. At the same time, Kaiser filed internal disciplinary charges against Wilson. The Respondent's ''hearing tribunal'' voted to expel Wilson. The expulsion was later reversed by the joint council. Kaiser appealed to the general executive board. Wilson was reinstated. In 1989, Wilson unsuccessfully sought to unseat Kaiser as secretary-treasurer. ''If you are going to coddle this type of person, you are no better than he and they are.'' (G.C. Exh. 7.)

[12] G.C. Exh. 8.

[13] G.C. Exh. 14.

moval of the eight signatories from the mailing list, thus, denying them information on the ''extra benefits.''[14]

To understand this sanction and its limits, it is noted that earlier, the Respondent had provided the insurance carrier with mailing labels, stationery, envelopes, and access to its bulk mailing permit[15] to allow reproduction of a letter to be sent active, inactive, and retired members. Through that document, it was announced on behalf of the Respondent that no-cost coverage had been acquired under a $2000-accidental death and dismemberment policy. That letter included a prepaid, self-addressed card, for completion, which was described as necessary to ''deliver your certificate, designate your beneficiary, and receive your signature.'' It included the following warning: ''If you fail to designate your beneficiary, the $2000 will be paid to your estate which may be taxable.''[16]

### D. *Concluding Analysis*

#### 1. The issues

The complaint assumes that Kaiser went beyond campaign rhetoric and used his position and influence within the Local Union to foster reprisals against Watson, Wilson, Ness, Brown, Schuler, Tomten, McGuire, and Stearnes. By way of defense, the Respondent contends that their support of the Watson letter was not activity with protective guarantees of Section 7. Alternatively, it is argued that, if this were the case, considering the nature of the Respondent's conduct, there was no impact on the employer-employee relationship, thus, limiting the conduct complained of to purely internal action beyond the Board's remedial jurisdiction. The Respondent also challenges the General Counsel's claim of wrongful motive, contending, on the one hand, that Kaiser acted legitimately to prevent the beneficiaries of the complaint from jeopardizing the continuation or implementation of any future internal union benefit programs, and, finally, that Kaiser's motivation cannot be attributed to the membership which at a duly constituted meeting voted to adopt his recommendations.

#### 2. Kaiser's action failed to impact on employment

The alleged reprisals essentially relate to union intervention threatening to or actually impairing participation by Watson, Wilson, Ness, Brown, Schuler, Tomten, McGuire, and Stearnes in certain benefit programs. The benefits in question were arranged between the union leadership with private vendors. They were promotional in origin and without cost to the Union. In each instance, they were provided by firms seeking to market goods and/or services to the membership. Hence, they were not financed by dues payments, and, at the same time, were neither a product of, nor directly or indirectly funded through collective bargaining.

The Respondent correctly observes that interference with participation in such programs would not impact on employment terms. For this reason, the Respondent argues that, since the complaint is based exclusively on intraunion conduct, remote from employment terms, the Board is powerless to intervene. With one exception, this claim is founded on precedent in effect prior to 1969, and rendered obsolete by the Supreme Court's demarcation of permissible internal union discipline. Thus, in *Scofield v. NLRB*, 394 U.S. 423 (1969), the Court held that ''if a rule invades or frustrates an overriding policy of the labor laws [and hence was beyond the legitimate interests of the labor organization] the rule may not be enforced, even by fine or expulsion, without violating § 8(b)(1).'' 394 U.S. at 429. Internal action is legitimate only where enforcement:

> [R]eflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule. [394 U.S. at 430.]

Since *Scofield*, the Board, in a uniform body of precedent has held that restraining members who exercise Section 7 rights is neither a matter of legitimate union interest, nor in consonance with national labor policy. This is so even where the coercion is manifested by an internally imposed fine, rather than sanctions tending to impact on the employment relationship. Accordingly, the *Scofield* exception is routinely denied where dissent is suppressed through internal disciplinary procedures. See *Carpenters Local 22 (Graziano Construction)*, 195 NLRB 1, 2 (1972). In other words, the Act prohibits union leaders from enforcing personal goals at the expense of members by any form of coercion, be it a fine, itself ''unrelated to the employer-employee relationship,'' or other form of internal deprivation. *Machinists Local 707 (United Technologies)*, 276 NLRB 985, 981 (1985);[17] *Steelworkers Local 1397 (U.S. Steel Corp.)* (Threat to invoke disciplinary procedures), 240 NLRB 848 (1979); and *Operating Engineers Local 139 (AGC of Wisconsin)*, 273 NLRB 992

[14] G.C. Exh. 21. John Wilson testified that at the meeting Kaiser stated that he could not understand how anyone could send a letter such as that sent to Wisconsin Vision by Watson, while singling Wilson out, noting that he had signed and was running on the ''member's first'' slate. Wilson took the floor to acknowledge that he had signed, defending this action on grounds that the signers were tired of the Union's ''trash'' letters and felt that they should be able to get their eyeglasses where they pleased. He confirmed that Kaiser went on to state that the signers would be removed from the mailing list preventing them from getting further literature. Wilson testified to another meeting on November 10 in which Kaiser referred to the fact that Watson's letter would be answered, adding that, ''he would exclude everyone that signed that letter from the $2000 insurance policy.''

[15] According to Kaiser, the Respondent was reimbursed by the carrier for the postage costs.

[16] G.C. Exh. 22.

[17] Contrary to the implication in the Respondent's brief there is no inconsistency between the decision in *Machinists Local 707*, supra, and *Meat Cutters Local 593*, 237 NLRB 1159 (1978). Both cases involved an application of the test articulated in *Scofield*, supra at 440, for determining when a union has a legitimate interest in disciplining members. In *Meat Cutters Local 593*, supra, that criteria was met where the union was simply seeking to force members to support an organizational effort. A different result was reached *Machinists Local 707*, supra, where the union invoked internal discipline to suppress dissent. The holding in this latter case was consistent with established precedent that discipline of political rivals did not reflect ''a legitimate union interest.'' See *Graziano Construction*, supra.

fn. 2 (1984).[18] Thus, the guarantees, which are at the cornerstone of Section 7, will survive the possibility that union leaders might discover forms of reprisal that punish, yet do not tread on employment terms.[19] Accordingly, there is no merit to the claim that the complaint fails to state an actionable unfair labor practice.

3. The August 21 letter and Section 7 of the Act

The Respondent, in urging dismissal of the complaint, also contends that the August 21 letter was not activity protected by the Act. In support, this document is viewed as no different from the antidiscrimination picketing in *Emporium Capwell Co. v. Western Addition Community Organization*, 420 U.S. 50 (1975). That case is inapposite. The dischargees involved there were not engaged in internal politics. Their activity did not target a union official. Instead, they picketed their employer in protest of alleged racially discriminatory policies, urging a boycott in ''attempting to bargain with the Company over the terms and conditions of employment as they affected racial minorities.'' 420 U.S. at 60. Thus, that case involved an attempt to override the negotiating process and to denigrate the exclusive status conferred by the Act to the majority representative. In the instant case, there was no attempt to undercut the terms of any negotiated collective-bargaining agreement, nor institutionally to intrude on the Respondent's representative status. Those who concertedly appended their signatures to Watson's letter were simply manifesting their displeasure with a union official, who used his official standing in the Union to influence personal judgment as to just whom members should patronize. In taking offense to this conduct and communicating their dissent, those involved were insulated from any form of reprisal.

This is so despite the suggestion in the record that the letter might not have been inspired by politics.[20] For, no matter what the forum, ''an employees right to engage in intraunion activities in opposition to the incumbent leadership of his union is concerted activity protected by Section 7.'' *Steelworkers Local 1397 (U.S. Steel Corp.)*, supra at 849. Absent a breach of the peace or conflict with specific statutory objectives, the nature of that opposition is unimportant. In such circumstances, where the leadership purports to act in an official capacity, they may not lawfully retaliate against those who diagree. The coercion triggered by that document was presumptively violative of Section 8(b)(1)(A) of the Act.

4. The reprisals

With one exception, the factual premise for each of Kaiser's allegedly unlawful steps is documented fact. Thus, Kaiser, by his letter of October 20, informed Watson that he would not receive any extra benefit which Kaiser had negotiated on behalf of union members. It is also documented that, on this very date, first, at the Respondent's executive board meeting and later at a general membership meeting, Kaiser declared and made a formal motions that the Respondent elect to deny those who signed the Watson letter ''any benefit information other than what their contract or labor agreement provides.''[21]

On the other hand, a major issue derives from the absence of authoritative evidence establishing that any negotiated extra benefit, either in terms of eligibility or enjoyment, was actually denied. The Respondent insists that this did not occur. In support, it is argued that any threat to interfere with enjoyment of these benefits was never implemented, and that the beneficiaries of the complaint were not in fact denied the right to participate in any of the programs involved. To an

[18] The Board's holding in this case was reversed by the court of appeals. *NLRB v. Operating Engineers Local 139*, 796 F.2d 985, 990 (7th Cir. 1986). This is the only authority cited by the Respondent which may not be distinguished and which supports its position. However, in rejecting the Board's position in that case, the court declared that ''internal union fines or discipline that restrains § 7 rights are not violations of § 8(b)(1)(A).'' This view of the law is in derogation of clearly established Board policy, which I am duty bound to follow.

[19] The Respondent argues that there can be no violation absent some deprivation of an employment right even where ''the union is motivated by wholly improper reasons, such as a desire to stifle internal dissent.'' I am aware of no current Board authority supportive of that view. The Respondent gains no solace from *Hod Carriers Local 703*, 150 NLRB 1614 (1965). The result in that case was later repudiated by *NLRB v. Shipbuilders*, 391 U.S. 418 (1968); its rationale is displaced by the formulation articulated by the Supreme Court in *Scofield*; and its rationale undermined by the Board's subsequent applications of *Scofield* in *Graziano Construction*, and *Machinists Local 707*, supra. Also misplaced is the Respondent's reliance on *Pottery Workers (Colton Mfg.)*, 254 NLRB 696 (1981). That case turned on motive, with the Board's dismissal based on the judge's reasoning that the withholding of strike benefits to strike breakers was not linked to their election to cross the picket line, but actuated instead by uniformly applied, nondiscriminatory limitations on eligibility for union strike benefits. Id. at 699–700. Thus, the rationale of that case was consistent with the disposition in *Scofield*. The judge in *Colton* did rule that those violations founded on a breach of the ''duty of fair representation'' require a showing of detrimental impact on employment terms. Under that theory, this might well be the case. However, the instant complaint is not founded on fiduciary duties that arise from the status of a exclusive statutory representative, but turns on coercion with respect to Section 7 rights, as distinguished from generic concepts of ''arbitrary and invidious'' motivation.

[20] Watson does not intimate that he held ambitions in that regard. He testified that he drafted the letter solely because he felt it inappropriate for the Union to suggest where members should conduct their business. At the time Watson was not allied with the TDU, and there is no evidence that he had opposed Kaiser in the past. Moreover, the document was not used for propaganda purposes; because, neither he nor the other signers appear to have taken steps to circulate the letter among the membership generally. In fact, of the signers, only Wilson and McGuire were shown to be in a position to reap political dividends from any form of criticism of Kaiser.

[21] G.C. Exhs. 20 and 21. The Respondent contends that in order to find the allegations, evidence must substantiate that the membership and executive board acted on the same unlawful motive possessed by Kaiser. There is no merit in this view. Kaiser was an admitted agent who used his standing within the Union to influence these internal bodies to take action. His unlawful motive is imputed to both. Moreover, Kaiser concedes that each adopted his recommendation with the benefit of documentation that Kaiser was using the August 21 letter as means of combating political opponents. By acting on his motion that the signers be removed from the mailing list, with benefit of this information, the executive board and membership condoned and ratified any illegality embraced by Kaiser. Yet, even were this not the case, Kaiser's personally held motivation would bind those who adopted his recommendations, just as would be the case of a supervisor who recommends union-inspired discrimination, later approved by a higher management echelon which is unaware of union activity. See, e.g., *Postal Service*, 290 NLRB 120, 124 (1988).

extent, I would agree. The only benefit plans involved were the discounts with Wisconsin Vision and the death and dismemberment insurance. With respect to the former, there is no evidence that the Respondent took steps to debar the beneficiaries from doing business on the same terms as other members in good standing. As for the insurance arrangement, the only denial evident by credible proof on this record is removal from the Respondent's mailing list,[22] action which had the immediate consequence of denying them a special mail-in card.

There is no merit in the assertion by the Respondent that ''Watson's group lost nothing as a result of not receiving the postcard.'' At Kaiser's instigation, names and addresses of all eight were withheld from those forwarded to the insurance company. Consistent with the Respondent's contention, Kaiser testified that these individuals nevertheless remained eligible for the benefit, just as would those, who by choice, declined to respond to the insurance firm. However, he concedes that the insurance carrier had no means for transmitting the above document to the eight who signed the August 21 letter, and that they would not have received the insurance carrier's solicitation or the return card.[23]

Contrary to the Respondent, on this basis, it, at Kaiser's behest, denied each valuable considerations. Their right to change beneficiaries was foreclosed.[24] Moreover, all eight were prejudiced in their opportunity to obtain insurance certificates from the insurer, thus, leaving heirs without evidence of coverage.[25] Accordingly, the removal from the mailing list is not viewed as having such negligible effect as to be removed from the forms of coercion outlawed by Section 8(b)(1)(A) of the Act.

4. Kaiser as the defender of membership interests

The Respondent answers the General Counsel's prima facie showing on the ground that Kaiser's action was privileged. Thus, it is contended that these steps were necessary to defend the membership ''because the Watson group sent an insulting vituperative letter to [Wisconsin Vision],'' and in consequence, the Respondent ''decided not to assist the letter-writers by providing them any further information about discounts or free services, including mailings that have response cards enclosed.''

This defense is based entirely on the uncorroborated, self-serving testimony of Kaiser. He states that the names were removed because he did not want supporters of the August 21 letter to have access to American Income Life and jeopardize the death and dismemberment program as he claims they had done in the case of Wisconsin Vision. While I was not impressed with Kaiser generally, in this respect, his testimony seemed implausible.

Great doubt is generated by his testimony that the Watson letter placed the Wisconsin Vision arrangement in jeopardy. In this respect, Kaiser insists that an unidentified representative of Wisconsin Vision telephoned him and was ''adamant'' in his threat to ''cancel'' the discounts. Yet, the minutes of the executive board and general membership meetings of October 20 fail to refer to any complaint or communication from Wisconsin Vision, or to any need to take action against the signers in the interest of preventing them from interfering with arrangements with other providers. Moreover, it is unlikely that Wisconsin Vision would have threatened to terminate the arrangement as described by Kaiser. Kaiser admits that he arranged the discounts with Wisconsin Vision because the latter wanted ''to pick up more business.'' Consistent therewith, the discounts involved would be a small price for Wisconsin Vision's access to a clientele of 1850 union members. I consider it unlikely that this firm would have shown any inclination to cut its own throat by taking steps risking this source of business.

The improbability of Kaiser's story is heightened by the timing of his response. He initially confirmed that he received the telephone call from Wisconsin Vision in August. The Respondent's brief states that the August 21 letter ''provoked a storm of controversy internally, causing the union membership to vote to exclude the eight signatories to the letter from a future mailing about free insurance.'' Any ''controversy'' was hardly knee-jerk. His concern did not become manifest until mid-October.[26] Kaiser's response was multifaceted. His letter to Watson, dated October 20, mentioned no need to protect the interests of the membership, but personally attacked Watson, ''Member's First [sic],'' and Watson's antiunion beliefs. [G.C. Exh. 12.] In that letter, although the executive board had not met, and the general membership meeting had not met, Kaiser declared unreservedly that: ''The Local Union will remove your name from any of the EXTRA benefits negotiated by the author of

[22] Although Kaiser was generally regarded as unreliable, I believed his testimony that no formal action of any kind was necessary to establish eligibility for the insurance, and that all members are covered whether they returned the card or not. His analysis is consistent with that document which on its faces defines all the adverse consequences of nonreturn, omitting noncoverage as among them. The contrary testimony by Watson was unpersuasive since apparently based on his personal understanding, rather than direct knowledge of American Income Life's actual policy. I was also unpersuaded by the uncorroborated testimony of John Wilson that at the general membership meeting of November 10, Kaiser stated that he would exclude ''everyone that signed that letter from the $2000 insurance policy sent out to all retirees and all people that were laid off and the people who were working, which come to 1,940 people at that time.'' I have difficulty accepting that Kaiser at that time would depart from and expand his carefully worded, declared intention merely to remove the members in question from union mailings. In addition, in terms of coverage, I am not convinced that Kaiser was in a position to exclude any member for any reason. Based on probability and my impression of Wilson, his uncorroborated testimony as to what was said on November 10 was more likely his interpretation of Kaiser's remarks, and was not persuasive as to what was actually said.

[23] Kaiser acknowledged that the names in question were never restored to the mailing lists.

[24] Kaiser argumentatively attempted to mitigate the effects of his action by observing that these individuals would have had the opportunity to designate beneficiaries in prior years when they were covered by similar insurance. This view would not account for the fact that those adversely affected were denied the opportunity to change beneficiaries or to add new ones.

[25] Kaiser's testimony acknowledges that heirs would be at mercy of the Union. He avers that the insurance firm has no listing of those covered, but is dependent on notification by the Respondent in the event of death. With the certificate, the Respondent's opportunity to prejudice beneficiaries and heirs in the proceeds would be reduced.

[26] Kaiser attempted to excuse the delay because Wisconsin Vision ''assured that they weren't going to cancel it.'' Obviously, if this obviated a response in August, it also would have removed any necessity for taking action in October.

this reply.'' Thus, quite apart from any intent to protect the membership from this group's interference with the special benefit arrangements, the controversy was personal to Kaiser, with the August 21 letter resurrected in October at his instance to put those who signed in their place.[27] Kaiser admittedly had a strong distaste for Wilson and his support of TDU and the candidacy of Ron Carey for International President. Contemporaneous with his intraunion actions against those who acted in league with Watson, Kaiser employed the Watson letter as a medium for rallying support for his published message that Wilson and the TDU were out to destroy the Union. In sum, Kaiser's published actions and communications are more impressive evidence of his motive than that which was uncommunicated and self-serving.

Accordingly, Kaiser's testimony in this respect was not believed, and there is no credible proof to substantiate that he acted for legitimate reasons unrelated to his own political ambitions when he threatened to exclude Watson from participation in special benefit plans; and when he induced the Respondent to remove from mailing lists the names and addresses of Wilson, Ness, Brown, Schuler, Tomten, McGuire, and Stearnes, thus, frustrating their access to the self-addressed card enabling them to communicate with the carrier of the death and dismemberment policy. In each instance, the Respondent, based on Kaiser's conduct violated Section 8(b)(1)(A) of the Act.

## CONCLUSIONS OF LAW

1. The Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(b)(1)(A) of the Act by telling a James A. Watson, a member in good standing that he would not be permitted to participate in special benefit programs.

4. The Respondent violated Section 8(b)(1)(A) of the Act by declaring that Watson, John Wilson, Willard Ness, George Brown, Davis Schuler, Anton Tomten, Mike McGuire, and Richard Stearnes, all members in good standing, would be removed from mailing lists pertaining to special benefit programs.

5. The Respondent violated Section 8(b)(1)(A) of the Act by removing Watson, Wilson, Ness, Brown, Schuler, Tomten, McGuire, and Stearnes, all members in good standing, from mailing lists pertaining to special benefit programs.

6. The above unfair labor practices having an effect on commerce within the meaning of Section 2(6) and (7) of the Act.

## THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, it shall be recommended that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

It having been determined that the Respondent effectively precluded Watson, Wilson, Ness, Brown, Schuler, Tomten, McGuire, and Stearnes, from communicating with a provider of special benefits under the same terms as other union members, it shall be recommended that the Respondent be ordered to provide American Income Life Insurance Company, and any other provider of such benefits, information necessary to communicate with these individuals, notifying the providers in writing that each be allowed to participate in any and all benefits on the same terms as other members in good standing.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[28]

## ORDER

The Respondent, Teamsters Local Union No. 579, International Brotherhood of Teamsters, AFL–CIO, Janesville, Wisconsin, its officers, representatives, and assigns, shall

1. Cease and desist from

(a) Telling members in good standing that because they participated in activity protected by Section 7 of the Act they would be excluded from special benefit programs.

(b) Declaring or determining that members in good standing, who participate in activity protected by Section 7 of the Act will be excluded from mailing lists pertaining to special benefit programs.

(c) Removing members in good standing from mailing lists pertaining to special benefit programs because they participated in activity protected by Section 7 of the Act.

(d) In any like or related manner coercing or restraining employees in the exercise of their rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action deemed necessary to effectuate the policies of the Act.

(a) Immediately furnish American Income Life Insurance Company, and any other provider of special membership benefits, information necessary to communicate with James Watson, John Wilson, Willard Ness, George Brown, Davis Schuler, Anton Tomten, Mike McGuire, and Richard Stearnes, notifying the providers that each is entitled to participate in any and all benefits on the same terms and conditions extended to other members in good standing.

(b) Post at its offices and meeting halls in Janesville, Wisconsin, and elsewhere within its geographic jurisdiction copies of the attached notice marked ''Appendix.''[29] Copies of the notice, on forms provided by the Regional Director for Region 33, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to

[27] My disbelief of Kaiser is by no means altered by the R. Exhs. 4(a) through (l), which essentially were letters of support from committeemen or stewards, supporting Kaiser's practice of negotiating special benefits for the membership. I am convinced that all were in response to Kaiser's own solicitations from among these subordinate union officials. G.C. Exh. 13.

[28] If no exceptions are filed as provided by Sec. l02.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. l02.48 of the Rules, be adopted by the Board and all objections thereto shall be deemed waived for all purposes.

[29] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

## APPENDIX

### NOTICE TO MEMBERS
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT tell members in good standing that because they participated in activity protected by Section 7 of the Act they shall be excluded from special benefit programs.

WE WILL NOT declare or determine that members in good standing who participate in activity protected by Section 7 of the Act will be excluded from mailing lists pertaining to special benefit programs.

WE WILL NOT remove members in good standing from mailing lists pertaining to special benefit programs because they participated in activity protected by Section 7 of the Act.

WE WILL NOT in any like or related manner coerce or restrain employees in the exercise of the rights set forth at the top of this notice.

WE WILL immediately furnish American Income Life Insurance Company, and any other provider of special membership benefits, information necessary to communicate with James Watson, John Wilson, Willard Ness, George Brown, Davis Schuler, Anton Tomten, Mike McGuire, and Richard Stearnes, advising said providers that each of these members is entitled to participate in any and all benefits on the same terms and conditions as extended to other members in good standing.

TEAMSTERS LOCAL UNION NO. 579, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL–CIO